

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-2(c)

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In Re: Michelle Migliaccio

Debtor

Case No: 16-20761-MBK

Chapter: 13

Judge: Michael B. Kaplan

DEBTOR'S MOTION TO IMPOSE AUTOMATIC STAY

PURSUANT TO §362(c)(3)(B), (C)

Debtor, Michelle Migliaccio, respectfully request that this Court to reinstate the case and impose the automatic stay, pursuant to 11 U.S.C. § 362(c)(3)(B), (C), and in support thereof state(s):

1. The debtor filed this bankruptcy petition on June 2, 2016.

2. As such, the Automatic Stay would have terminated on July 2, 2016 without a new motion extending it..
3. The debtors previously filed bankruptcy, 16-18779-MBK, on May 4, 2016 but due to a scheduling error on the part of the attorney because he was away for his anniversary, it was dismissed on May 19, 2016 for failure to file Ch. 13 Plan and Motions.
4. The case was ultimately closed on June 2, 2016.
5. This current bankruptcy was filed in good faith on June 2, 2016, after the previous one was closed.
6. The presumptions of bad faith from 11 U.S.C. § 362(c)(3)(C)(i) would not apply to this case, as 1) adequate protection could not be paid as there was simply not enough time, 2) the plan had not been filed yet and 3) the dismissal was because of the debtor's attorney being absent until the day after the dismissal.
7. Additionally, the creditor RREF II IB-NJ, LLC's improper motion for relief from stay was filed prematurely and in bad faith, because it was filed a mere **fifteen** days after it this case was filed, on June 17, 2016.
8. Further it was not properly served on Debtor or Debtor's counsel.
9. Debtor did, in fact make a payment June 24, 2016 and were told telephonically as long as that was received, the Motion for Relief From Stay would be withdrawn.
10. Debtor also made their first trustee payment and a second mortgage payment as well today, **July 19, 2016**, proofs will be brought to court.
11. Creditor requested relief and mislead the debtor for the sole purpose of trying to move forward with a Sheriff Sale scheduled for **July 21, 2016**.

12. As such, based on 11 U.S.C. § 362(c)(3)(C) the stay can be extended so debtors may retain their home as would be proper, continue making payments which would benefit everyone, and continue to work on a modification, as loss mitigation is called for in their plan.

13. In using its discretion to grant such a motion, "the bankruptcy court should exercise its equitable powers with respect to substance and not technical considerations that will prevent substantial justice." Stark v. St. Mary's Hospital (In re Stark), 717 F.2d 322, 323 (7th Cir. 1983) (per curiam). Hawkins v. Landmark Finance Company, 727 F.2d 324, 326 (4th Cir. 1984) (involved the reopening of a case to permit a lien avoidance proceeding; the determination to reopen a case is left to the sound discretion of the court and depends upon the circumstances of the case).

14. Additionally, re-imposing the automatic stay would not prejudice any secured or unsecured creditors.

WHEREFORE, the debtors pray that this Court grant the Motion to Impose the Automatic Stay as to all creditors after notice and opportunity to be heard, and for all other proper relief.

Dated: July 19, 2016

By: /s/ Joshua L. Thomas

Joshua L. Thomas, Esq.

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Hearing Date: 05/04/2016 at 10:30 a.m.

Judge: Michael B. Kaplan

O R D E R

AND NOW, this day of , 2016, it is hereby ORDERED and
DECREEED that the Debtor's Case is Reinstated and Motion To Impose Automatic Stay Pursuant
to §362(c)(3) is GRANTED and the automatic stay is re-imposed for all debtors.

BY THE COURT:

Honorable,

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CERTIFICATE OF SERVICE

I, Joshua Thomas, Esq., do hereby certify that on July 19, 2016, service of a true and correct copy of the attached pleadings, and attachments thereto, was delivered by first class mail and/or electronic filing to the below named interested parties.

Date: July 19, 2016 By: /s/ Joshua Thomas
Joshua Thomas, Esq.